

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

9301-171-999

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Application Number

10/092,285

Filed

March 5, 2002

First Named Inventor

John Hinchcliffe

Art Unit

1641

Examiner

Ann Y. Lam

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 47,138

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature

Peter G. Thurlow

Typed or printed name

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Telephone number

February 21, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	John Hinchcliffe	Confirmation No.:	7757
Serial No.:	10/092,285	Art Unit:	1641
Filed:	March 5, 2002	Examiner:	Ann Y. Lam
For:	MICROARRAY REACTION CARTRIDGE	Attorney Docket No.:	9301-171-999
		CAM No.:	301891-999163
		Date:	February 21, 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby requests review of the Final Rejection mailed November 21, 2006 ("Final Rejection") of the above-identified application prior to filing an appeal brief for the reasons set forth below. A Notice of Appeal is included with this submission.

Independent claim 1, as amended to date, is provided below:

1. A microarray cartridge, comprising:

a body having a wall forming a cavity surrounded by a mating surface, said body comprising a reaction chamber and at least one microarray support contained within the cavity, said at least one microarray support supporting a microarray slide within the cavity such a that surface of the slide covers the reaction chamber; and

a cover that (a) is covering the cavity such that said slide is disposed between said cover and the reaction chamber, and (b) is sealing adhered with the mating surface of said body by non-removable adhering means on all but one edge of the mating surface, said all but one edge being unsealed to said cover.

In the Office Action dated November 21, 2006, claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,582,285 ("Hamilton") in view of U.S. Patent No. 6,258,593 ("Schembri et al.").

Applicant submits that the cited references of Hamilton and Schembri et al., when considered in combination or when taken separately, would not teach or suggest the features as recited above in claim 1.

Initially, Applicant submits that Hamilton is directed to a disposable test package that includes a unitary member formed into a plurality of compartments for the admixing and reaction of reagents and sample material added thereto. More specifically, the invention in Hamilton is directed to an automatic chemical analysis of body fluids such as blood and urine.

The Office Action states that Hamilton discloses a body that includes, among other things, a body having "... at least one microarray support contained within the cavity." The Examiner states that the flat portion as represented by reference numeral 40 in Fig. 2 of Hamilton supports this assertion. Applicant submits that this reference would not teach or suggest the "at least one microarray support supporting a microarray slide within the cavity" as recited in claim 1. Without limiting the scope of claim 1, an embodiment of the present invention includes ledges 26, 28, within the cavity for supporting a microarray 40. Such supports do not include a floor 40 of a chemical package as disclosed in Hamilton.

The Office Action also states that Hamilton discloses a cover (i.e., membrane 26) that is sealingly adhered with the mating surface 24 by non-removable adhering means and that the cover in Hamilton is considered to be sealingly adhered on all but one edge of the mating surface because the cover can be peeled by the user during use thereby unsealing one edge of the mating surface. The Examiner states that col. 9, lines 25-45, provides support for these assertions. Applicant submits that this section discusses sealing the membrane to the flange "to maintain the predisposed reagents in their particular storage locations and to provide the proper environment necessary for prolonged storage life." Nothing in this section would teach or suggest having a microarray cartridge that includes a cover sealingly adhered with a mating surface 22 on all but one edge. Without limiting the scope of claim 1, an embodiment of the present invention includes one unsealed edge such as the edge having fluted opening 56, 58 to facilitate, e.g., addition of a processed sample when it is time to use cartridge 10 (see, e.g., the original specification, at page 22, lines 8-14).

The Examiner also asserts that since the cover in Hamilton can be peeled by the user during use that such use would teach or suggest a microarray cartridge that includes a cover sealingly adhered with a mating surface 22 on all but one edge, as recited in claim 1.

Applicant submits that claim 1 is directed to a microarray cartridge, not a method of using such microarray cartridge. Applicant respectfully disagrees with the Examiner's reasoning in the Office Action and submits that nothing in this paragraph or in any other section of Hamilton would teach or suggest a microarray cartridge that includes a cover sealingly adhered with the mating surface on all by one edge of the mating surface.

The Office Action also states that Schembri teaches a microarray slide within the cavity such that a surface of the slide covers the reaction chamber, and that the slide is disposed between the cover and the reaction chamber. Applicant submits that Schembri does not teach or suggest these features. In fact, Applicant notes that the reaction chamber in Schembri is disposed between a substrate 2 and cover 3 (see, e.g., col. 11, ll. 9-11, "[t]he reaction chamber is formed by bringing the inner surface of the cover 3 into contact with the upper surface of the substrate 2"). In the present application, as recited in claim 1, the "... slide is disposed between said cover and the reaction chamber"

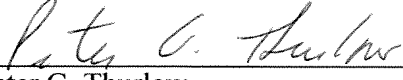
In addition to the points made above, Applicant notes that it does not agree with a number of the Examiner's characterizations of Hamilton and Schembri in the Office Action. For example, in relation to the Examiner's comments at page 5 of the Office Action as to claim 24, the Examiner states that "Hamilton teaches at least 4 cavities (16, 18, 20 and 22) with microarray supports (e.g., the side walls of the cavities)." Applicant does not agree with the Examiner's characterization and notes for the record that such supports would not be used to support a microarray slide as recited in claim 1.

At least for the reasons cited above, Applicant requests that this application be allowed or be reopened for prosecution.

Applicant's undersigned attorney may be reached in our New York Office at the phone number below. All correspondence should continue to be directed to our address listed below.

Date: February 21, 2007

Respectfully submitted,


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